



## InfoSight Highlight

### ADA Website Accessibility Update

Many compliance officers have been asking for an update on the status of the Justice Department's ADA website accessibility regulations. Don't worry, you didn't miss anything. They're still outstanding.

In 2010, the Department of Justice (DOJ) issued an advance notice of proposed rulemaking (ANPR) to adopt standards for the web accessibility of state and local government entities (Title II) and public accommodations like credit unions (Title III) under the Americans with Disabilities Act (ADA). According to the [DOJ's fall 2015 statement of regulatory priorities](#), the department expects to publish the title II notice of proposed rulemaking (NPRM) early in fiscal year 2016.

DOJ believes that the title II web site accessibility rule will “facilitate the creation of an important infrastructure for web accessibility that will be very important in the Department's preparation of the title III web site accessibility NPRM.” Therefore, DOJ has decided to extend the time period for development of the proposed title III web site accessibility rule and include it among its long-term rulemaking priorities. DOJ expects to publish the title III web site accessibility NPRM during fiscal year 2018.

So, we're still in a holding pattern on the regulatory front. Nevertheless, ADA lawsuits are pressuring businesses to make websites “accessible” to individuals with disabilities, citing ADA’s general principal of “equal access.” Therefore, credit unions that have websites are encouraged to review the ADA Best Practices Tool Kit for State and Local Governments, available [here](#). This document may help to provide some useful direction while we wait for additional guidance. Credit unions may also want to consult legal counsel to determine any present exposure to lawsuits.

Stay tuned for future developments. For more information on the ADA, please see the [American With Disabilities Act](#) topic in InfoSight.

## Compliance News

### New Online Tool to Identify Counterfeit Cash

FRB Services has [announced](#) the availability of a new online tool to identify counterfeit currency. The new online training module is available in [English](#) and [Spanish](#) versions. It includes an overview of

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*Affiliates*

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## Compliance Video

### Compliance Connection Video

[In this video](#), League InfoSight CEO Glory LeDu talks about the highlights from the 4th Quarter of 2018 and the 1st Quarter of 2019.

When S.2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, passed in 2018 there was a lot to understand! Glory LeDu, League InfoSight CEO, provides [Part 1 in this short video](#) to break it down for you.

Just a reminder that Compliance videos since 2016 can be found on YouTube at [the Compliance Connection](#)

U.S. currency, discusses security features and provides quick easy ways to authenticate currency. A final exam is also included to test a participant's skills in detecting potential counterfeit notes. Click [here](#) for more information.

[channel](#), where they are generally updated quarterly.

### Compliance Calendar

December 25  
Christmas Day - Federal Holiday

December 31  
Foreign Account Tax Compliance Act Effective Date

January 1, 2016  
New Years Day - Federal Holiday

Flood Insurance Rule Effective Date - Part 2  
January 12  
Microsoft Discontinues Support of Older Versions of Internet Explorer

January 18  
Martin Luther King, Jr Birthday - Federal Holiday

January 22  
5300 Call Report Due to NCUA

February 15  
Washington's Birthday/President's Day - Federal Holiday

March 13  
Daylight Savings Time Begins

[Click here for upcoming compliance dates.](#)

### Is Your Credit Union Subject to HMDA?

On October 15<sup>th</sup> of this year, the Consumer Financial Protection Bureau (CFPB) issued a final rule amending the Home Mortgage Disclosure Act (HMDA). In addition to significantly expanding the amount of data credit unions must collect and report, the new rule has narrowed the scope of institutions that will be covered by HMDA. As a result, some small credit unions may not originate enough covered loans to satisfy the new loan volume threshold requirement and could escape the new rule.

### Who Is Covered Under the New Rule?

To be subject to HMDA data reporting requirements, a credit union must first meet the following four tests under the existing rule:

1. Asset based test: On the preceding December 31, the credit union had assets in excess of the asset threshold established and published annually by the Bureau (the 2015 threshold was \$44 million);
2. Geographical test: On the preceding December 31, the credit union had at least one home or branch office in a Metropolitan Statistical Area (MSA);
3. Origination test: In the prior year, the credit union originated at least one purchase-money first mortgage loan or a refinancing of a first mortgage loan secured by a 1-4 family dwelling; and
4. Federally related test: The credit union is federally insured or regulated, or the mortgage loan referred to was insured, guaranteed, or supplemented by a Federal agency or intended for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

Under the new amended rule, in addition to satisfying the above four criteria, a credit union must also satisfy the new uniform loan volume threshold requirement which is being implemented in two phases based on the effective date:

## Compliance Training

- **Phase I:** Effective January 1, 2017, did the credit union originate at least 25 closed-end mortgages loans in each of the preceding two calendar years?
- **Phase II:** Effective January 1, 2018, did the credit union originate at least 25 or more closed-end mortgages OR 100 or more open-end lines of credit (HELOCs) in each of the preceding two calendar years?

Phase II is especially significant because for the first time, HELOC reporting is no longer optional for covered institutions. This could present a significant compliance burden for many credit unions, especially those that originate their HELOCs on their consumer loan platform separate from their mortgages. However, the new loan volume threshold requirement also means that some credit unions may not have to report certain types of HMDA data anymore. Please note that the loan volume thresholds apply independently from one another, so a credit union that originates more than 25 mortgages but less than 100 HELOCs would only report mortgage data, and vice-versa.

**For more information on the recent changes to the Home Mortgage Disclosure Act, please see CUNA's [HMDA CompNote: Final Rule Analyses](#).**

December 16, 2015  
[Mortgage Lending - NCUA Webinar](#)  
**2:00 - 3:30 p.m. EST**

January 26, 2016  
[Grassroots Academy](#)  
**Atlanta, GA**

February 21 – 25, 2016  
[CUNA Governmental Affairs Conference](#)  
**Washington D.C.**

May 11 – 14, 2016  
[GCUA Annual Convention](#)  
**Savannah, GA**

BSA Training Opportunities through GCUA  
[Click here for details](#)

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Are Loan Applicants Required to Sign the TILA-RESPA Closing Disclosure?

**Question: Are loan applicants required to sign the TILA-RESPA Closing Disclosure?**

**Answer:** According to [CUNA's Compliance Blog](#), the answer is “no.” Signatures by the loan applicants are not “required” on the closing disclosure since they only confirm receipt of the closing disclosure. A creditor may decide not to include a signature line, but would instead be required to disclose a statement as shown below.

Whether a signature line is provided is determined solely by the creditor. If a signature line is provided, the creditor must disclose the following above the signature line and below the heading “Confirm Receipt”: “By signing, you are only confirming that you have received

this form. You do not have to accept this loan because you have signed or received this form.”

If there is more than one consumer who will be obligated on the loan, the first consumer signs as the applicant and each additional consumer signs as a co-applicant. If there is not enough space under the heading “Confirm Receipt” to add additional signature lines for every consumer in the transaction, the creditor may add additional signature pages, as needed, at the end of the Closing Disclosure for the remaining consumers’ signatures.

However, the creditor is required to disclose the same heading and statement discussed in the previous paragraph.

In addition, the creditor may insert the consumer’s name under the signature line, rather than using the designation “Applicant” or “Co-Applicant.”

In the case where the creditor decides not to include a line for the consumer’s signature, the creditor must disclose the following statement under the heading “Other Considerations”, and labeled “Loan Acceptance”: “You do not have to accept this loan because you have received this form or signed a loan application.”

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Reg E Overdraft Notice & Record Retention

**Question: What are the record retention requirements for the Reg E overdraft opt-in notice?**

**Answer:** First, some background on the rule for those new to compliance and also those who might benefit from a brief review: Section 1005.17 of Regulation E prohibits an institution that holds a consumer’s account from assessing any fee or charge on the account for paying an ATM or a one-time debit card transaction as part of the institution’s overdraft service, *unless*:

- The consumer is provided with a notice in writing, (or if the consumer agrees, electronically) segregated from all other information, explaining the institution’s overdraft service;
- The consumer is given a reasonable opportunity to affirmatively consent (opt in);

- The consumer affirmatively consents (opts in) to the service; and
- The institution provides the consumer with confirmation of the consumer's consent in writing (or if the consumer agrees, electronically), which includes a statement informing the consumer of the right to revoke such consent.

The opt-in requirement applies to any ATM transaction (e.g., withdrawing cash, inter-account transfers, etc.) at any location (e.g., institution-owned and operated, third party, proprietary, and foreign ATMs), and any one-time debit card transaction (e.g., at a merchant, online, or by telephone). The rule does not apply to check transactions, recurring debits, or ACH transactions.

**Answer:** Now, on to the answer to your question: Reg E does not contain a specific record retention requirement for overdraft opt-in notices. Therefore, the general record retention requirements will apply.

Section 1005.13 of Reg E requires financial institutions to retain “evidence of compliance” with the requirements imposed by the Electronic Fund Transfer Act and Regulation E for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.

What does “evidence of compliance” mean? The staff commentary to the rule explains that a financial institution need not retain records that it has given disclosures and documentation to each consumer; it need only retain evidence demonstrating that its procedures reasonably ensure consumers' receipt of required disclosures and documentation. In addition to record retention requirements, credit unions need to keep track of “opt ins” (affirmative consent) and any revocations of consent to ensure compliance for the lifetime of active consumer accounts that utilize overdraft protection services.

Documenting your Reg E compliance is more important than ever following the CFPB’s recent enforcement action against Regions Bank for unlawful overdraft practices, including charging overdraft fees to consumers who had not opted-in to overdraft coverage for ATM and one-time debit card transactions. Regulatory scrutiny is likely to increase, so make sure your credit union is providing the proper disclosures, documenting your institution’s compliance with the rule, and keeping track of Reg E consents and revocations.

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What's New in the FFIEC BSA Examination Manual?

**Question: Our credit union hasn't had a chance yet to determine what's new in the updated FFIEC BSA Examination Manual. Does the updated manual include new requirements, and if so, what are the new BSA requirements?**

**Answer:** The answer is "yes, and no." While the updated manual (November 2014) includes new requirements and recommendations that have been issued since the previous edition of the manual in 2010, they are probably not new to you because you have already seen them in documents and other publications when they were initially issued. The updated manual incorporates all of the guidance from the past 5 years into the FFIEC Examination Manual for easy reference.

A lot of the changes throughout the manual are simply updated terms, for example, "electronic cash" is now "prepaid access"; new citations, since the rule has been moved in the Code of Federal Regulations from 31 CFR 103 to 31 CFR Chapter X; and you are no longer going to see the term "facsimile". (Some of the younger BSA Officers may be unfamiliar with that term anyway.)

Other small changes include moving information from footnotes into the body of the text and adding over 30 new footnotes throughout the manual. Additionally, the Customer Due Diligence, Independent Testing and Compliance Program sections have added information to clarify and emphasize significant points.

The areas of the manual that have had significant updates include: Prepaid Access, SARs, CTRs, and Nonbank Financial Institutions. These chapters are worth a review.

Unfortunately, the manual is not going to be available in the 5 ½ X 8 ½ inch spiral format like the 2010 edition. But the good news is that it will be easier to update an online resource in a more timely manner.

Click [here](#) to access the BSA/AML Exam Manual.

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Your CU Should Know...

**FHA Sets New Loan Limits for 2016:** The Federal Housing Administration has announced a new schedule of loan limits for 2016. These loan limits are effective for case numbers assigned on or after January 1, 2016, and will remain in effect through the end of the year. Each year, FHA recalculates its loan limits based on 115 % of the median house price in the area. For counties, or equivalent, located in Metropolitan Statistical Areas (MSAs) the limit for all areas in the MSA is calculated based on the highest cost county. Due to changes in housing prices, the maximum loan limits for forward mortgages increased in 188 counties. There were no areas with a decrease in the maximum loan limits for forward mortgages.

**CFPB Announces Tool for Measuring Financial Well-Being:** The CFPB has released a tool to measure consumer financial well-being. This first-of-its-kind tool provides questions that educators and others working to build financial capability can use to accurately and consistently quantify the financial well-being of consumers. The new tool comprises ten questions that financial educators can use when working with clients to measure their financial security and overall sense of financial well-being. In January 2015, the CFPB released a report that provided a definition of financial well-being, drawing on interviews with consumers across the country, relevant research, and consultations with leading financial education experts.

**Bureau Fines Credit Reporting Company \$8M:** The CFPB Has announced it has taken action against a Florida-based nationwide credit reporting company, Clarity Services, Inc., and its owner, Tim Ranney, for illegally obtaining consumer credit reports. The company also violated the law, reported the Bureau, by failing to appropriately investigate consumer disputes. The Bureau is ordering the company and its owner to halt their illegal practices and improve the way they investigate consumer disputes and obtain, sell, and resell consumer credit reports. The company and Ranney must also pay an \$8 million penalty to the Bureau.

The Bureau found that Clarity violated the Fair Credit Reporting Act by illegally obtaining the consumer reports of tens of thousands of consumers—without a permissible purpose—for use in marketing materials for potential clients. The company also failed to investigate

consumer disputes, including consumer disputes about unauthorized credit inquiries.

**FDIC Revises Compliance Examination Manual:** The FDIC has issued [FIL-59-2015](#) which announces the revision of the agency's *Compliance Examination Manual* to reflect recent supervisory guidance. (While not a credit union regulator, these resources may still be useful to credit unions.) The manual provides guidance to FDIC examination staff for evaluating financial institutions for compliance with federal consumer protection laws and regulations. The manual, which is available on the FDIC's website, may help staff at institutions who are seeking to better understand the FDIC's consumer compliance examination process. The revised manual includes:

- Updated templates providing examples of a consumer compliance Report of Examination and a CRA Performance Evaluation for a hypothetical, FDIC-supervised bank (the Bank of Anytown);
- New guidance about Matters Requiring Board Attention (MRBA), a section of the Report of Examination that directs banks to important information about weaknesses in a compliance management system, depending on the facts and circumstances at a particular bank;
- Guidance on evaluating the impact of consumer harm on examination and supervisory activities;
- A new "Assessment of Risk of Consumer Harm" (ARCH), which provides pre-examination planning and scoping guidance to FDIC examination staff; and
- Additional enhancements, such as bookmarks to improve navigation, hyperlinks to many external references, and downloadable chapters.

## Comment Calls

NCUA Field of Membership Proposal

The National Credit Union Administration has published [\[80 FR 76747\]](#) a proposed rule that would comprehensively amend its chartering and field of membership rules to put them in a more efficient framework and to maximize access to federal credit union services to the extent permitted by law. The amendments would implement changes in policy affecting:

- the definition of a local community, a rural district, and an underserved area;

- the expansion of multiple common bond credit unions and members' proximity to them;
- the expansion of single common bond credit unions based on a trade, industry or profession; and
- the process for applying to charter or expand a federal credit union.

GCUA would like to know your thoughts and comments on NCUA's proposal. Please send them to Selina Gambrell by **January 11, 2016**, at [selinag@gcua.org](mailto:selinag@gcua.org).

**We encourage all credit unions to review the proposed rule and comment to NCUA.**

The [CUNA Advocacy Update](#) keeps you on top of the most important changes in Washington for credit unions--and what CUNA is doing to monitor, analyze, and influence government agencies and federal law. You can view the current report and past reports from the archive.

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